

No. CL-2025-0419

IN THE ALABAMA COURT OF CIVIL APPEALS

ALABAMA DEPARTMENT OF PUBLIC HEALTH
AND SCOTT HARRIS

Appellants,

v.

OASIS FAMILY BIRTHING CENTER, LLC, ET AL.

Appellees.

ON APPEAL FROM THE
CIRCUIT COURT OF MONTGOMERY COUNTY
03-CV-23-901109

APPELLANTS' BRIEF

Steve Marshall
Attorney General

Edmund LaCour
Solicitor General

Hunter L. Sims*
Assistant Attorney General

Benjamin H. Albritton*
Assistant Attorney General
Counsel for Appellant

*Counsel of Record

State of Alabama
Office of the Attorney General
501 Washington Avenue
Montgomery, Alabama 36130

July 22, 2025

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not requested in this case. The record and briefs before the Court provide an adequate basis for the Court to decide the issues presented in this appeal. The Court would not be aided by oral argument.

TABLE OF CONTENTS

STATEMENT REGARDING ORAL ARGUMENT.....	2
TABLE OF CONTENTS	3
STATEMENT OF JURISDICTION	5
TABLE OF AUTHORITIES.....	6
ABBREVIATIONS TABLE	8
STATEMENT OF THE CASE.....	9
STATEMENT OF THE ISSUES	14
I. Did the circuit court err in granting declaratory and injunctive relief against ADPH when the state agency is entitled to sovereign immunity?.....	14
II. Did the circuit court err in holding that ADPH cannot regulate FSBCs as “hospitals” when FSBCs are both engaged in obstetrical care and offer care to the public generally?	14
III. Did the circuit court err in granting a permanent injunction against Defendants when Plaintiffs cannot demonstrate success on the merits?.....	14
STATEMENT OF THE FACTS	15
A. The Plaintiffs.....	15
B. The Defendants	17
C. ADPH Regulatory Authority.....	18
D. Operation of Freestanding Birth Centers.....	21
E. Operation of Plaintiff Birth Centers.....	24
F. ADPH Authority over Birth Centers	26
STATEMENT OF THE STANDARD OF REVIEW	27

SUMMARY OF THE ARGUMENT	28
ARGUMENT.....	28
I. The circuit court erred in granting declaratory and injunctive relief against ADPH because the state agency is entitled to sovereign immunity.	28
II. The circuit court erred in finding that FSBCs operating under a midwifery model of care are not “hospitals” subject to ADPH regulation.	30
a. FSBCs operating under a midwifery model of care are engaged in providing obstetrical care.	31
b. FSBCs operating under a midwifery model of care offer care to the public generally.....	36
III. The circuit court erred in granting a permanent injunction against Defendants.	41
CONCLUSION	43
CERTIFICATE OF COMPLIANCE	44
CERTIFICATE OF SERVICE	45

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Ala. Code § 12-3-10 to review a final judgment of a circuit court with respect to a decision of a state administration agency. *See Kimberly-Clark Corp. v. Eagerton*, 433 So. 2d 452, 454 (Ala. 1983). This Court also has jurisdiction of this appeal because this is a case requesting only equitable relief and “the amount involved” appears to be less than \$50,000. *Alabama Department of Public Health v. TSTL Holdings, LLC*, Case No. CL-2024-0604, 2025 WL 1198441, at *2 (Ala. Civ. App. April 25, 2025).

TABLE OF AUTHORITIES

CASES

<i>Alabama Department of Public Health v. TSTL Holdings, LLC</i> , Case No. CL-2024-0604, 2025 WL 1198441 (Ala. Civ. App. April 25, 2025)	5, 29, 38
<i>City of Gadsden v. Boman</i> , 143 So. 3d 695 (Ala. 2013)	42
<i>Kimberly-Clark Corp. v. Eagerton</i> , 433 So.2d 452 (Ala. 1983)	5
<i>Lyons v. River Road Constr., Inc.</i> , 858 So. 2d 257 (Ala. 2003)	29
<i>Norfolk S. Ry. Co. v. Johnson</i> , 740 So. 2d 392 (Ala. 1999)	40
<i>Parker Bldg. Services Co., Inc. v. Lightsey ex rel. Lightsey</i> , 925 So. 2d 927 (Ala. 2005)	40
<i>Ryals v. Lathan Co., Inc.</i> , 77 So. 3d 1175 (Ala. 2011)	29
<i>Tucker v. State Department of Public Health</i> , 650 So. 2d 910 (Ala. Civ. App 1994)	34
<i>Weathers v. City of Oxford</i> , 895 So. 2d 305 (Ala. Civ. App. 2004)	38

STATUTES

Ala. Admin. Code r. 420-5-13-.01	20, 21
Ala. Code § 12-3-10 (1975)	5
Ala. Code § 22-1-1 (1975)	18
Ala. Code §§ 22-2-1 (1975)	17
Ala. Code § 22-2-2 (1975)	17
Ala. Code § 22-2-8 (1975)	18
Ala. Code § 22-21-20 (1975)	passim

Ala. Code § 22-21-21 (1975).....	40
Ala. Code § 22-21-22 (1975).....	11, 12, 18, 30
Ala. Code § 34-19-12 (1975).....	23, 35
Ala. Code § 34-19-14 (1975).....	23, 34
Ala. Code § 34-19-15 (1975).....	23
Ala. Code § 34-21-81 (1975).....	22
Ala. Code § 34-21-83 (1975).....	22
Ala. Code § 34-21-84 (1975).....	22
Ala. Code § 34-21-85 (1975).....	22
Ala. Code § 34-21-86 (1975).....	35
Ala. Code § 34-21-90 (1975).....	22
Ala. Code § 34-24-330 (1975).....	21
Ala. Code § 41-22-10 (1975).....	11

OTHER AUTHORITIES

Ala. Op. Atty. Gen. No. 2023-012.....	19
MERRIAM-WEBSTER DICTIONARY, www.merriam-webster.com/dictionary/usually	39
www.merriam-webster.com/dictionary/generally	39

CONSTITUTIONAL PROVISIONS

Ala. Const. Art. I, sec. 14.....	28
----------------------------------	----

ABBREVIATIONS TABLE

AABC	American Association of Birth Centers
ABC	Alabama Birth Center
ACNM	American College of Nurse Midwives
ADPH	Alabama Department of Public Health
CNM	Certified Nurse Midwife
CPA	Collaborative Practice Agreement
CPM	Certified Professional Midwife
FSBC	Freestanding Birth Center
OFBC	Oasis Family Birthing Center, LLC

STATEMENT OF THE CASE

On August 8, 2023, Plaintiffs Oasis Family Birthing Center, LLC; Heather Skanes, M.D.; the Alabama Birth Center; Yashica Robinson, M.D.; Birth Sanctuary; Stephanie Mitchell, Doctor of Nursing Practice (DNP), Certified Nurse Midwife (CNM), Certified Professional Midwife (CPM); and the Alabama Affiliate of the American College of Nurse-Midwives (ACNM) sued the Alabama Department of Public Health (ADPH) and Scott Harris (Harris), in his official capacity as State Health Officer at ADPH (collectively, the “Defendants”) (C. 9), contesting ADPH regulations, then pending and now in effect, for the governance and licensure of freestanding birth centers (FSBCs).¹ C. 41-43. FSBCs are autonomous health care centers that utilize a midwifery model of care.

One day after filing their Complaint, the original Plaintiffs moved for a preliminary injunction enjoining Defendants from requiring FSBCs operating under a midwifery model of care to obtain a license to operate,

¹ In accordance with the Alabama Administrative Procedure Act (AAPA), Defendants promulgated final rules for FSBCs that were adopted by the State Committee of Public Health on August 17, 2023, and became effective on October 15, 2023. The Final Regulations apply to all facilities holding themselves out to the public as FSBCs, regardless of their stated model of care.

in accordance with Ala. Code § 22-21-20 (defining “hospitals”). C. 164. On September 30, 2023, after a two-day hearing, the circuit court granted the preliminary injunction (C. 857), enjoining Defendants “from refusing to timely license (including but not limited to refusing to timely issue temporary or interim licenses to) freestanding birth centers operating in the midwifery model of care (including Plaintiffs . . .) that can demonstrate substantial compliance with the standards set out by the American Association of Birth Centers [AABC]” and meet certain statutory requirements.² C. 857-858. Plaintiffs Oasis Family Birthing Center, LLC (OFBC) and Alabama Birth Center (ABC) subsequently sought and obtained temporary licensure from ADPH upon demonstration of compliance with AABC standards.³ C. 1899 ¶ 1; C. 1900 ¶ 2.

The pending ADPH regulations for FSBCs became effective on October 15, 2023. C. 1033. To account for the finalized regulations, Plaintiffs filed their First Amended Complaint on January 19, 2024,

² AABC is a voluntary association that provides general guidelines for the operation of birth centers. C. 1005 ¶ 23.

³ By requiring ADPH to issue a temporary license to these FSBCs, the circuit court tacitly acknowledged that ADPH had jurisdiction over the Plaintiffs.

which is the current operative Complaint. C. 997. Two new Plaintiffs were added to the First Amended Complaint – Jo Crawford and Tracie Stone – both of whom are midwives, and Stephanie Mitchell and Birth Sanctuary were removed as Plaintiffs. *Id.* The current Plaintiffs in the First Amended Complaint will be referred to simply as “Plaintiffs.”

The First Amended Complaint has thirteen causes of action, seeking declaratory and injunctive relief. C. 1044-56. Only Claim One is at issue in this appeal, alleging that Defendants have exceeded their statutory authority in regulating Plaintiffs’ FSBCs, in violation of Ala. Code § 41-22-10 of the Alabama Administrative Procedure Act (AAPA). Plaintiffs argue that ADPH lacks regulatory authority to license them, as FSBCs operating under a midwifery model of care, because they are not “institution[s] . . . primarily engaged in offering to the public generally . . . obstetrical care,” and thus are not “hospitals” as defined in Ala. Code § 22-21-20(1). C. 1044-45; *see also* Ala. Code § 22-21-22 (giving ADPH authority to regulate hospitals). The remaining claims challenge specific ADPH regulations as violating the Alabama Code, the Alabama Constitution, or the United States Constitution. C. 1045-56. Claim One is thus a threshold question as to whether Defendants have authority to

regulate FSBCs operating under a midwifery model of care. If Defendants lack this authority, the remaining claims challenging the specific regulations for Plaintiffs' FSBCs are moot.

On January 14, 2025, all parties stipulated to the facts as to Claim One (Joint Stipulation of Facts). C. 1899. Defendants and Plaintiffs each filed Motions for Summary Judgment, contending that they were entitled to judgment as a matter of law as to Claim One. C. 1909; C. 1925. Following oral argument, on May 1, 2025, the circuit court denied Defendants' Motion for Summary Judgment and granted Plaintiffs' Motion for Summary Judgment. C. 2909.

On May 7, 2025, the circuit court entered an amended order (C. 2929), holding that FSBCs utilizing midwives do not provide "obstetrical care" and are not "offering [care] to the public generally," so they are not hospitals subject to ADPH regulation. C. 2935. The circuit court gave declaratory relief to this effect and permanently enjoined Defendants from requiring FSBCs operating under the midwifery model of care to obtain a hospital license under Ala. Code § 22-21-22. C. 2942-43.

On May 23, 2025, Defendants filed an Unopposed Motion for Rule 54(b) Certification as to the "Amended Order Granting Summary

Judgment for Plaintiffs and Denying Summary Judgment for Defendants on Claim One of Plaintiffs' First Amended Complaint" (Amended Summary Judgment Order). C. 2944. On May 26, 2025, pursuant to Rule 54(b) of the Alabama Rules of Civil Procedure, the circuit court certified the Amended Summary Judgment Order as final and found that there was no just reason for delay. C. 2949-51.

In the Rule 54(b) certification, the circuit court found that both factors to be considered in determining whether there is "no just reason for delay" weighed heavily in favor of the certification. C. 2950. First, there is no unreasonable risk of inconsistent results in the present lawsuit. *Id.* Claim One is a threshold question as to ADPH's authority; the remaining claims are presented in the alternative. *Id.* Second, there is no risk that issues remaining pending in the trial court could moot claims on appeal. *Id.* The opposite situation was presented in this case, as this Court's decision on Claim One could moot the remaining claims. *Id.*

The circuit court stayed the case pending the completion of the appeal. C. 2962. Defendants timely filed their Notice of Appeal to this Court on June 6, 2025. C. 2952.

STATEMENT OF THE ISSUES

- I. Did the circuit court err in granting declaratory and injunctive relief against ADPH when the state agency is entitled to sovereign immunity?
- II. Did the circuit court err in holding that ADPH cannot regulate FSBCs as “hospitals” when FSBCs are both engaged in obstetrical care and offer care to the public generally?
- III. Did the circuit court err in granting a permanent injunction against Defendants when Plaintiffs cannot demonstrate success on the merits?

STATEMENT OF THE FACTS

The parties have stipulated to the facts as to Claim One (Joint Stipulation of Facts). These facts can be found in the Record on Appeal at C. 1899 –1908 and are included below for ease of this Court’s review.⁴

A. The Plaintiffs

1. Oasis Family Birthing Center, LLC (hereinafter “OFBC”) is a freestanding birth center (“FSBC”) in Birmingham, Alabama, founded in June 2022 and currently operating under a temporary license issued by Defendant Alabama Department of Public Health (“ADPH”) on January 1, 2024, pursuant to the temporary injunction issued in this case.⁵

2. Alabama Birth Center (hereinafter “ABC”) is a FSBC in Huntsville, Alabama, which began development in 2020, and is currently

⁴ Footnotes were included in the Joint Stipulation of Facts. These footnotes have been included herein but are sequentially numbered with the footnotes in this Brief. References to document numbers in the Joint Stipulation of Facts have also been changed to the appropriate citations in the Record on Appeal.

⁵ See Order Granting Pls.’ Mot. Prelim. Inj., [C. 857] (Sept. 30, 2023) [hereinafter “Prelim. Inj. Order”], *supplemented by* Suppl. Prelim. Inj. Order, [C. 925] (Oct. 3, 2023) [hereinafter “Suppl. Prelim. Inj. Order”], *reconsideration denied*, Order Defs.’ Mot. Recons., [C. 980] (Oct. 16, 2023).

operating under a temporary license issued by Defendant ADPH on July 17, 2024, pursuant to the temporary injunction issued in this case.⁶

3. Heather Skanes, M.D., is a duly licensed board-certified obstetrician and gynecologist. Dr. Skanes is OFBC's founder and Executive Director.

4. Yashica Robinson, M.D., is a duly licensed board-certified obstetrician and gynecologist. Dr. Robinson is ABC's founder and Executive Director.

5. Jo Crawford is a nationally-certified Certified Professional Midwife ("CPM") and holds licenses in Virginia and Alabama. She currently provides midwifery services in Alabama at OFBC and through her home birth practice, Home Sweet Birth, LLC.

6. Tracie Stone is a nationally-certified CPM and holds licenses in Utah and Alabama. She currently provides midwifery services in Alabama at ABC, where she is the Clinical Director, and through her home birth practice, Grace and Glory Maternity Care Services.

⁶ See Prelim. Inj. Order; Suppl. Prelim. Inj. Order.

7. The American College of Nurse Midwives (hereinafter “ACNM”) is a nationwide professional association of Certified Nurse Midwives (“CNMs”). ACNM sets the national standards for nurse-midwifery education and practice in the United States. ACNM’s Alabama affiliate, ACNM-AL, is the primary organization representing CNMs in Alabama. ACNM-AL provides professional support and liaises with ACNM on behalf of its members with respect to questions about national standards, state laws, and regulations. ACNM-AL also engages in advocacy on its members’ behalf and provides a forum for CNMs practicing in Alabama. Its membership includes all Alabama-based members of the national ACNM, including members who are dually certified as CNMs and CPMs.

B. The Defendants

8. The State Committee of Public Health has authority to create and enforce public health regulations in Alabama. Ala. Code §§ 22-2-1 and -2.⁷ The Alabama Department of Public Health is synonymous with

⁷ Effective October 1, 2024, Ala. Code § 22-2-1 has been revised, as follows:

The State Board of Health is abolished. All powers and duties of the State Board of Health, as those powers and duties exist on September 30, 2024, are conferred upon the State Committee of Public Health created under Section 22-2-4, and the State

the State Committee of Public Health when ADPH acts on behalf of the State Committee of Public Health. Ala. Code § 22-1-1.⁸

9. Scott Harris, M.D., MPH, is the State Health Officer for ADPH. As State Health Officer, Dr. Harris is the executive officer of ADPH, and is responsible, inter alia, for supervising the licensing of hospitals in Alabama. *See* Ala. Code § 22-2-8.

C. ADPH Regulatory Authority

10. Pursuant to Ala. Code § 22-21-22, ADPH has authority to regulate hospitals.

11. The term “hospitals” is statutorily defined in Ala. Code § 22-21-20(1), as follows:

General and specialized hospitals, including ancillary services; independent clinical laboratories; rehabilitation centers; ambulatory surgical treatment facilities for patients not requiring hospitalization; end stage renal disease treatment and transplant centers, including free-standing hemodialysis units; abortion or reproductive health centers; hospices; health maintenance or-

Committee of Public Health shall act as the State Board of Health for purposes of this code.

⁸ Effective October 1, 2024, Ala. Code § 22-1-1 has been revised, as follows: “For the purposes of this code, the Alabama Department of Public Health shall mean the State Committee of Public Health.”

ganizations; and other related health care institutions when such institution is primarily engaged in offering to the public generally, facilities and services for the diagnosis and/or treatment of injury, deformity, disease, surgical or obstetrical care. Also included within the term are long term care facilities such as, but not limited to, skilled nursing facilities, intermediate care facilities, assisted living facilities, and specialty care assisted living facilities rising to the level of intermediate care. The term “hospitals” relates to health care institutions and shall not include the private offices of physicians or dentists, whether in individual, group, professional corporation or professional association practice. This section shall not apply to county or district health departments.

12. The term “obstetrical care,” as cited in Ala. Code § 22-21-20(1), is not statutorily defined. The Alabama Attorney General, in opining on whether an FSBC is a hospital pursuant to Ala. Code § 22-21-20(1), cited the medical dictionary definition of obstetrics as “the branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium.” *Obstetrics*, TABER’S CYCLOPEDIA MEDICAL DICTIONARY (18th ed. 1997); see Ala. Op. Atty. Gen. No. 2023-012. Throughout the litigation, the parties have agreed that this is the appropriate definition of obstetrics.

13. An FSBC provides pregnancy, birthing, postpartum, and limited newborn care in a home-like environment to low-risk patients who

have been clinically screened and receive continuous risk assessment to proactively identify risk factors or complications that could arise during pregnancy or birth and affect the patients' ability to be safely cared for in an FSBC.

14. FSBCs are independent, autonomous health care centers and are not attached to or organized as part of a general or specialized hospital or other acute care facility.

15. Effective October 15, 2023, ADPH adopted final regulations for the licensure and regulation of FSBCs. Ala. Admin. Code r. 420-5-13-.01 to -.19 (hereinafter "Final Regulations"). The Final Regulations cite Ala. Code § 22-21-20 as their "Legal Authority." Ala. Admin. Code r. 420-5-13-.01(1).

16. In pertinent part, the Final Regulations would require all FSBCs either to have a physician on staff or to have an agreement with a consulting physician and would require such physicians to meet certain physical presence and supervision requirements. *See id.* r. 420-5-13-.01(2)(b), (f), (w).

17. The Final Regulations restrict CPMs' scope of practice in FSBCs to providing care only as "assistive" personnel to a physician or

CNM and prohibit them from providing independent patient care at FSBCs throughout pregnancy, birth, and the postpartum period, including attending deliveries. *See id.* r. 420-5-13-.01(2)(b), (e).

18. The Final Regulations prevent CNMs from working in FSBCs absent a valid Collaborative Practice Agreement (“CPA”) with the FSBC’s staff or consulting physician, and meeting other experience and training requirements. *See id.* r. 420-5-13-.01(2)(b), (d), (f), (w).

D. Operation of Freestanding Birth Centers

19. Plaintiffs OFBC and ABC operate as FSBCs through CNMs and CPMs, utilizing a midwifery model of care.

20. Midwifery care is a patient-centered health care model for pregnancy-related care with a focus on shared decision-making, patient education, and physiological birth with minimal technological interventions to initiate or augment labor.

21. Midwifery is practiced by trained midwives with a different skill set, education, and training background than obstetricians, who are licensed and regulated by the Alabama State Board of Medical Examiners. Ala. Code § 34-24-330, et seq.

22. Two kinds of midwives are licensed to practice in Alabama: CNMs and CPMs. Both kinds of midwives provide care in the midwifery model but fulfill different educational and training requirements.

23. CNMs are advanced practice registered nurses licensed and regulated by the Alabama Board of Nursing to engage in practice as a nurse midwife. CNMs must complete a nursing program qualifying them as a registered nurse, in addition to specialized training and certification in nurse midwifery. Ala. Code §§ 34-21-81(1), 2(b).

24. In Alabama, CNMs are required to maintain CPAs [Collaborative Practice Agreements] with licensed physicians as a condition of their advanced practice. Ala. Code §§ 34-21-81(1), (5), 34-21-83, -84, -85, -90.

25. A CNM's scope of practice includes care during pregnancy, childbirth, and the postpartum period, and care for the healthy newborn during the first weeks of life. CNMs may conduct patient examinations; prescribe and administer certain medications; make decisions about patient admission, management, and discharge; and order and interpret laboratory testing.

26. CPMs are licensed and regulated by the Alabama State Board of Midwifery. Ala. Code §§ 34-19-12(a), -14, -15. CPMs must be credentialed through an education program or pathway accredited by the Midwifery Educational Accreditation Council or by another accrediting agency recognized by the United States Department of Education. Ala. Code § 34-19-15(a)(3).

27. A CPM's scope of practice encompasses the provision of care, counseling, and education throughout pregnancy, birth, and the postpartum period; making diagnoses; recognizing conditions requiring consultation or referral to other healthcare providers; administering medications; ordering and interpreting lab and diagnostic tests; providing continuous, hands-on care during labor and delivery; and providing maternal and well-baby care through 6-8 weeks postpartum.

28. Surgical and vaginal operative deliveries are not available in Plaintiffs OFBC and ABC, and these procedures are outside the scope of practice of the licensed midwives who work at Plaintiffs OFBC and ABC.

29. Plaintiffs OFBC and ABC pre-screen patients who might otherwise be eligible to deliver in an FSBC to ensure that they agree to forgo

medicated pain management during labor and agree to complete education components to ensure that they are prepared for unmedicated labor and early home discharge, among other conditions.

E. Operation of Plaintiff Birth Centers

30. As of this filing, the only FSBCs that are operating in Alabama are those that have received a temporary license pursuant to the Circuit Court's preliminary injunction orders.

31. ADPH granted OFBC a temporary license effective January 1, 2024, pursuant to the Circuit Court's injunction.

32. OFBC provides midwifery services for pregnancy-related care, including births, and neonatal care through six weeks after birth, utilizing the midwifery model of care. OFBC also provides patient education and counseling, including education on breastfeeding, preparing for childbirth, and newborn care.

33. At OFBC, CPMs or a dually licensed CNM/CPM conduct all prenatal and postpartum visits and attend births in the birthing center, with assistance from registered nurses (RNs), birth assistants, and/or student midwives, some of whom are also trained as doulas and lactation

consultants. Every birth is attended by staff with training in basic life support and neonatal resuscitation.

34. All patients at OFBC are pre-screened and receive continuous risk assessment to ensure that they remain eligible for birthing care in the birth center. Patients who develop risk factors are referred for consultation with Dr. Skanes through her private practice and, where appropriate, transferred to an OB/GYN for births at a general or specialized hospital.

35. ADPH granted ABC a temporary license in July 2024, pursuant to the Circuit Court's injunction.

36. ABC provides midwifery services for pregnancy-related care, including births, and neonatal care through six weeks after birth, utilizing the midwifery model of care. ABC also provides extensive patient education and counseling, including education on breastfeeding, preparing for childbirth, and newborn care.

37. At ABC, CPMs or CNMs conduct all prenatal and postpartum visits and will attend births in the birthing center, with assistance from RNs and/or student midwives, who also serve as birth assistants. ABC

also employs doulas and lactation consultants. Every birth is attended by staff with training in basic life support and neonatal resuscitation.

38. All patients at ABC are pre-screened and receive continuous risk assessment to ensure that they remain eligible for birthing care in the birth center. Patients who develop risk factors are referred for consultation with Dr. Robinson through her private practice and, where appropriate, transferred to her care for births at a general or specialized hospital.

F. ADPH Authority over Birth Centers

39. If FSBCs operating under the midwifery model of care are “hospitals” within the definition of Ala. Code § 22-21-20(1), the Plaintiff FSBCs are subject to ADPH’s regulatory authority.

40. If FSBCs operating under the midwifery model of care are not “hospitals” within the definition of Ala. Code § 22-21-20(1), ADPH lacks statutory authority to regulate the Plaintiff FSBCs.

STATEMENT OF THE STANDARD OF REVIEW

The standard of review “in cases involving summary judgments is de novo.” *Archie v. SoFi Lending Corp.*, 399 So. 3d 1067, 1070 (Ala. Civ. App. 2024). “When the facts are undisputed, no presumption attaches to the trial court’s judgment and the reviewing court must determine whether the trial court correctly applied the law to the facts.” *Id.* (quoting *Young v. Strong*, 694 So. 2d 27, 28 (Ala. Civ. App. 1997)).

SUMMARY OF THE ARGUMENT

The circuit court erred in granting Plaintiffs' Motion for Summary Judgment and denying Defendants' Motion for Summary Judgment. First, ADPH is entitled to sovereign immunity, so the circuit court lacked subject-matter jurisdiction to grant any relief as to ADPH. Second, FSBCs are "hospitals" subject to ADPH regulation. FSBCs, and the midwives in those facilities, are engaged in providing obstetrical care, and the facilities offer care to the public generally. And third, because Plaintiffs cannot demonstrate success on the merits, the circuit court erred in granting a permanent injunction against Defendants' regulation of FSBCs operating under a midwifery model of care. This Court should reverse the circuit court's order and find that Defendants are entitled to judgment as to Claim One.

ARGUMENT

I. The circuit court erred in granting declaratory and injunctive relief against ADPH because the state agency is entitled to sovereign immunity.

Article I, Section 14 of the Alabama Constitution of 1901 provides that "[t]he State of Alabama shall never be made a defendant in any court of law or equity." Ala. Const. Art. I, sec. 14. "Under § 14, the State and

its agencies are absolutely immune from suit.” *Lyons v. River Road Constr., Inc.*, 858 So. 2d 257, 261 (Ala. 2003). “Lack of subject-matter jurisdiction may be raised at any time by a party or by a court ex mero motu.” *Ryals v. Lathan Co., Inc.*, 77 So. 3d 1175, 1179 (Ala. 2011). Thus, if ADPH is named “as a defendant in [a] declaratory-judgment action, that action is barred by sovereign immunity.” *Alabama Department of Public Health v. TSTL Holdings, LLC*, No. CL-2024-0604, 2025 WL 1198441, at *2 (Ala. Civ. App. April 25, 2025). To the extent that a judgment “purports to adjudicate . . . claims against ADPH or to issue an injunction against ADPH, that judgment is void.”⁹ *Id.*

The circuit court’s Amended Summary Judgment Order issues both declaratory and injunctive relief against Defendants. The Order declares that both “ADPH and Scott Harris” lack authority to require FSBCs operating under a midwifery model of care to obtain a hospital license. C. 2942. In addition, the order permanently enjoins “Defendants” from requiring such FSBCs to obtain a license. C. 2943. But any order as to ADPH is barred by sovereign immunity. To the extent the circuit court’s

⁹ Defendants did raise Sovereign Immunity as an affirmative defense. C. 1371; C. 1878.

order is against ADPH, that judgment is void, and ADPH is due to be dismissed as a party to this action.

II. The circuit court erred in finding that FSBCs operating under a midwifery model of care are not “hospitals” subject to ADPH regulation.

ADPH has statutory authority to regulate hospitals. Ala. Code § 22-21-22. “Hospital” is defined in Ala. Code § 22-21-20(1) and includes health care institutions “primarily engaged in offering to the public generally . . . obstetrical care.” Thus, whether an FSBC is a hospital depends on whether it meets this statutory definition, not on whether it is commonly accepted in public opinion as being a hospital.

FSBCs are plainly hospitals because they are both engaged in providing obstetrical care and they offer care to the public generally. First, the stipulated facts demonstrate that the services provided in an FSBC fall within the confines of “obstetrical care.” Obstetrics includes the “branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium.” C. 1902 ¶ 12. FSBCs certainly offer such care. Plaintiffs’ contention otherwise would limit the ability to provide obstetrical care solely to medical doctors because only medical doctors can practice medicine. But the definition of “obstetrical

care” is not so limited. The midwives providing services in FSBCs offer health care to women throughout all stages of pregnancy; in some instances, midwives offer the same care to a pregnant woman as an OB/GYN. Other relevant statutes, such as the midwifery statute, confirm that midwives can perform some forms of obstetrical care, even if specific procedures in obstetrics are precluded from their scope of practice.

Second, FSBCs offer care to the public generally. Plaintiffs contend, and the circuit court agreed, that because Plaintiffs’ FSBCs limit which patients they can accept, they are not open to the public at-large. But the hospital definition at issue in the present case contradicts this argument. The definition of “hospitals” includes many facilities that are limited to only certain patients, yet they still offer care to the public generally. In addition to the statute, both the definition of “generally” and ADPH’s broad public purpose to “promote the public health” offer further support for the proposition that FSBCs employing a midwifery care model are open to the public generally.

a. FSBCs operating under a midwifery model of care are engaged in providing obstetrical care.

Plaintiffs allege that they operate under the midwifery model of care, which is distinguishable from obstetrics, so they are not hospitals

within the statutory definition in Ala. Code § 22-21-20(1). C. 1013 ¶ 52; C. 1045 ¶ 196. But, contrary to Plaintiffs’ assertions, the practice of midwifery by Certified Nurse Midwives (CNMs) and Certified Professional Midwives (CPMs) in FSBCs is undeniably linked with the provision of obstetrical care because of the services these professionals provide.

The parties have stipulated to the definition of obstetrics found in Attorney General Opinion 2023-012, as the “branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium.”¹⁰ C. 1902 ¶ 12; C. 2882-2887. Thus, the first of the questions before this Court regarding Defendants’ jurisdiction over “hospitals,” as defined in Ala. Code § 22-21-20(1), is whether FSBCs operating under the midwifery model offer care that encompasses the “management of women during pregnancy, childbirth, and the puerperium.”

The stipulated facts demonstrate overwhelmingly that Plaintiffs are involved in the management of women during all stages of their pregnancies and the birthing process, providing “pregnancy, birthing, postpartum, and limited newborn care in a home-like environment,” consistent with the obstetrical definition. C. 1902 ¶ 13; C. 1903 ¶ 19. They

¹⁰ The puerperium is the period of forty-two days following childbirth.

are unquestionably engaged in the provision of obstetrical care, using the midwifery model, which is a “patient-centered health care model for pregnancy-related care with a focus on shared decision-making, patient education, and physiological birth with minimal technological interventions to initiate or augment labor.” C. 1903 ¶¶ 19, 20. Oasis Family Birthing Center (OFBC) and the Alabama Birth Center (ABC) admittedly “provide[] midwifery services for pregnancy-related care, including births, and neonatal care through six weeks after birth.” C. 1905 ¶ 32; C. 1906 ¶ 36.

In their operation, OFBC and ABC provide services solely through CNMs and CPMs. C. 1903 ¶ 19. “A CNM’s scope of practice includes care during pregnancy, childbirth, and the postpartum period, and care for the healthy newborn during the first weeks of life.” C. 1904 ¶ 25. CNMs also “conduct patient examinations; prescribe and administer certain medications; make decisions about patient admission, management, and discharge; and order and interpret laboratory testing.” *Id.* CPMs, while having a different scope of practice than CNMs, are involved in the “provision of care, counseling, and education throughout pregnancy, birth, and the postpartum period.” *Id.* at ¶ 27.

Plaintiffs cling to the singular proposition that because midwives cannot practice medicine, they cannot engage in obstetrical care. But this Court should not lose the forest for the trees. The key inquiry as to whether Plaintiffs are engaged in providing obstetrical care concerns the *nature* of the care they provide. See *Tucker v. State Department of Public Health*, 650 So. 2d 910, 914 (Ala. Civ. App 1994) (holding that “[t]he regulation of the operation of a defined health care facility . . . is the regulation of what takes place there . . .”). Plaintiffs are, by their own admission through the stipulated facts, unquestionably involved in the “management of women during pregnancy, childbirth, and the puerperium.” C. 1902 ¶ 12; C. 2882-87.

Two additional points offer support for ADPH’s position. First, the midwifery statute presumes that midwives will be engaged in at least some forms of obstetrical care. Specifically, the statute provides that “[a] licensed midwife may not administer or perform any of the following obstetric procedures.” Ala. Code § 34-19-14(c). The Code then goes on to list *some*, but not *all*, obstetrical procedures. See *id.* at § 34-19-14(c)(5) (For example, a licensed midwife cannot perform a “Cesarean section or any

surgery or surgical deliver[y] except minimal episiotomies.”). Thus, a licensed midwife, as permitted by statute, is free to practice some forms of obstetrical care, except for the enumerated procedures.

Second, there is an overlap between the care that an OB/GYN (physician) provides and a midwife provides; in certain situations, they provide the same care. For instance, both CNMs and CPMs can administer medications and order laboratory testing for a pregnant patient. C. 1904 ¶¶ 25, 27; Ala. Code §§ 34-21-86; 34-19-12, -16. An OB/GYN can certainly do both of these things. Under Plaintiffs’ reading of § 22-21-20(1), only the doctor is engaged in providing obstetrical care when he administers medications or orders laboratory testing because only he or she can practice medicine. But, in this situation, the midwives and the doctor are doing the *exact* same thing. The reasonable conclusion is that *both* the doctor and the midwives are engaged in providing obstetrical care because *both* are providing the same healthcare for the pregnant patient.

The stipulated facts make it clear that Plaintiffs are engaged in a healthcare model that manages and offers care to women throughout pregnancy and childbirth; as such, they are engaged in the provision of obstetrical care and fall within the definition of a “hospital” set out in

Ala. Code § 22-21-20(1), subject to regulation by ADPH.

b. FSBCs operating under a midwifery model of care offer care to the public generally.

For an institution to fall within the hospital definition, not only must it offer obstetrical care, but it must offer such care to the public generally. Ala. Code § 22-21-20(1). Plaintiffs contend that because they limit which patients they can accept at their FSBCs, they are not open to the public at-large.¹¹ C. 1965-66. Plaintiffs, however, read this phrase too narrowly, and they cannot escape the hospital definition merely by arguing that they refuse to accept certain patients. Plaintiffs readily admit in their Motion for Summary Judgment that any patient who meets certain criteria and agrees to specific policies and procedures can and will be served by their FSBCs. C. 1966. Thus, Plaintiffs' FSBCs stand ready to serve any member of the public that meets these requirements.

¹¹ The stipulated facts provide: "All patients at OFBC are pre-screened and received continuous risk assessment to ensure that they remain eligible for birthing care in the birth center." C. 1905 ¶ 34; *see also* C. 1906 ¶ 38 (ABC follows the same process). Eligible patients have a low risk of developing complications during pregnancy or birth that would require advanced medical attention or procedures for mother or child that cannot be provided by CNMs and CPMs, whose scope of practice is limited by statute.

To accept Plaintiffs’ interpretation of the phrase “public generally” would contradict the definition of “hospitals” found in Ala. Code § 22-21-20(1). The definition includes facilities such as rehabilitation centers, ambulatory surgical treatment facilities, and transplant centers. C. 1901 ¶ 11. These facilities serve only a subset of the population but are still open to the public generally. Rehabilitation centers serve only patients in need of rehabilitation, while ambulatory surgical treatment facilities serve only patients who need certain surgeries that do not require hospitalization. Likewise, only individuals needing an organ transplant seek care at a transplant center. But they are all “hospitals” under § 22-21-20.

In addition to these facilities, the definition of a “hospital” also includes institutions “primarily engaged in offering to the public generally, facilities and services for the diagnosis and/or treatment of injury, deformity, disease, surgical or obstetrical care.” *Id.* This provision, the same one at issue in the present case, anticipates that each and every facility type that provides care within the confines of the definition will serve only those persons who require the services offered by that facility, for treatment of injury, surgery, obstetrics, etc. Any member of the public in

need of those particular services may seek care from those particular facilities.

Simply put, Plaintiffs' reading of Ala. Code § 22-21-20(1) conflicts with the clear language of the statute and would render almost no facility open to the public generally. Healthcare institutions could formulate a limiting screening process – a “carve out” of persons eligible (and ineligible) to receive service – that removes those facilities from the hospital definition and, more importantly, from any regulatory oversight of the facility itself.

This Court has explained that “the law favors rational and sensible construction” and has further stated “that the Legislature intended a just and reasonable construction” of its enactments. *Weathers v. City of Oxford*, 895 So. 2d 305, 309 (Ala. Civ. App. 2004). This Court must “read the concept of reasonableness into the provisions of [a] statute.” *TSTL Holdings, LLC*, 2025 WL 1198441, at *5 (other citations omitted).

By way of example, a common sense reading of the statute supports a conclusion that institutions offering surgical care by their nature screen out any person that does not need surgery. If someone walks into a sur-

gical center seeking non-surgical intervention, the doctors would certainly direct that individual to another type of facility. Yet, the legislature has included facilities that offer surgical care among the institutions that are open to the “public generally,” despite them only serving persons in need of surgery. FSBCs operating under the midwifery model of care are likewise open to the public generally because their facilities are available to all who need and qualify for their services.

The definition of the word “generally” further supports Defendants’ position. “Generally” means “usually” and is a synonym to both “normally” and “typically.” *Generally*, MERRIAM-WEBSTER DICTIONARY, www.merriam-webster.com/dictionary/generally (last visited July 7, 2025). Thus, put another way, an institution must be engaged in offering obstetrical care to the public *usually* or *typically*. “Usually” means “most often,” but not necessarily in all circumstances. *Usually*, MERRIAM-WEBSTER DICTIONARY, www.merriam-webster.com/dictionary/usually (last visited July 10, 2025). Even crediting Plaintiffs’ argument that they screen out certain patients, consistent with the statutory limitations on the scope of practice of the midwives who provide care in the FSBC, in most cases, their FSBCs would be open and available to pregnant women.

FSBCs operating under a midwifery model of care are therefore open to the public generally and subject to regulation by Defendants.

In addition to the support found within the statutory definition of a “hospital,” this Court should also find that FSBCs operating under the midwifery model are open to the public generally in keeping with ADPH’s purpose to protect the public health. Ala. Code § 22-21-21 states that the purpose of the regulation of hospitals is to “promote the public health, safety and welfare by providing for the development, establishment and enforcement of standards for the treatment and care of individuals.” To allow FSBCs with a midwifery model of care to escape regulation because they claim to serve only a subset of the population would run counter to efforts to protect the public generally. *See Parker Bldg. Services Co., Inc. v. Lightsey ex rel. Lightsey*, 925 So. 2d 927, 931 (Ala. 2005) (holding that the Court should interpret words in keeping with the Building Code’s purpose “to protect the public generally”); *see also Norfolk S. Ry. Co. v. Johnson*, 740 So. 2d 392, 396 (Ala. 1999) (When a “statute is ambiguous or uncertain, the court may consider conditions that might arise under the provisions of the statute and examine results that would flow from

giving the language in question one particular meaning rather than another.”).

To resolve this case, it is unnecessary for this Court to create a bright-line rule as to what facilities are open to the public generally. It is enough to say that FSBCs, regardless of their model of care, and as institutions open to all women that meet certain criteria, are plainly institutions offering care to the public generally. The statutory definition, principles of statutory construction, the dictionary definition of “generally,” and ADPH’s mission to promote public health all support this conclusion. Thus, FSBCs operating under the midwifery model are hospitals subject to ADPH regulation, and Defendants are entitled to judgment as to Claim One.

III. The circuit court erred in granting a permanent injunction against Defendants.

To be entitled to a permanent injunction, a plaintiff must demonstrate: 1) success on the merits, 2) a substantial threat of irreparable injury if the injunction is not granted, 3) that the threatened injury to the plaintiff outweighs the harm the injunction may cause the defendant, and 4) that granting the injunction will not disserve the public interest.

City of Gadsden v. Boman, 143 So. 3d 695, 703 (Ala. 2013). For the reasons stated above, Plaintiffs cannot demonstrate success on the merits, and Defendants are entitled to judgment as to Claim One. Accordingly, this Court should reverse the circuit court's order granting a permanent injunction against Defendants.

CONCLUSION

The circuit court's Amended Summary Judgment Order is due to be reversed. FSBCs are "hospitals" engaged in obstetrical care and offering care to the public generally, rightfully subject to ADPH regulation. Defendants are entitled to judgment as to Claim One, and the order granting a permanent injunction against Defendants should be reversed.

Respectfully submitted,

Steve Marshall
Attorney General

Edmund LaCour
Solicitor General

/s/ Hunter Sims
Hunter Sims
Ben Albritton
Assistant Attorneys General

OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, Alabama 36130-0152
Telephone: 334.242.7300
Facsimile: 334.353.8400
Hunter.Sims@AlabamaAG.gov
Ben.Albritton@AlabamaAG.gov

***Counsel for ADPH and Scott
Harris***

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation set forth in Ala. R. App. P. 28(j)(1). According to the word-count function of Microsoft Word, the brief contains 6,156 words from the Statement of Issues through the Conclusion. I further certify that this brief complies with the font requirements set forth in Ala. R. App. P. 32(a)(7). The brief was prepared in the Century Schoolbook font using 14-point type. *See* Ala. R. App. P. 32(d).

/s/ *Hunter Sims*
Hunter Sims

***Counsel for ADPH and Scott
Harris***

CERTIFICATE OF SERVICE

I hereby certify that I have on July 22, 2025, filed the foregoing with the Clerk of the Court, using the C-Track filing system, which will provide notice to all counsel of record.

/s/ Hunter Sims
Hunter Sims

***Counsel for ADPH and Scott
Harris***